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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,927	01/16/2001	Eiban Gunter	802	1316

7590 11/26/2004

MARSHALL, GERSTEIN, MURRAY & BORUN  
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EXAMINER
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MAYES, MELVIN C

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/701,927

Applicant(s)

GUNTER ET AL.

Examiner

Melvin Curtis Mayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8-21 and 24-31 is/are rejected.
- 7) ☒ Claim(s) 3,6,7,22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

(1)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(2)

Claims 1, 2, 4, 5, 8-21 and 24-31 rejected under 35 U.S.C. 103(a) as being unpatentable over Menayan 5,417,794 in view of Lindee 4,243,466.

Menayan 5,417,794 discloses a method and apparatus for disposing tubular (jacket) labels on a containers comprising: using finger assembly 60 (separating or spreading jaw unit) of pair of opposed inner fingers 62A,62B and outer grippers or fingers 64A,64B to engage the leading end of a tubular label, the finger assembly movable downwardly to apply the label to a container (pull-over application) placed on an article support 24 on rotating plate 16 (conveyor), the container fed to and from the rotating plate via feed mechanisms 130,142 (star wheels). A plurality of tubular label applying stations each having a finger assembly and article support continuously perform label applying operations. The finger assembly at each applying station is mounted on a carriage 72 for vertical movement using a cam track assembly (col. 7-14). Menayan does not disclose a holding device for holding the container by positive or friction lock prior to pull-over application, temporarily releasing the container and seizing the container and label when the label has been applied to the container.

Lindee 4,243,466 teaches that a labeling apparatus for applying sleeve (jacket) labels using label grippers is also provided with container clamps to insure consistent label application

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and so that container movement is at all times positively controlled and maintained a predetermined position throughout the container's movement to the opened label, while the same is being inserted into the open label and while the labeled container is removed from the labeling station. The container clamps clamp the unlabeled container, momentarily release their grip on the container as the label is being applied to the container and regrip the container and the sleeve label. The container clamps can be a pair of vertical support arms 60,60 (shafts) each mounting an clamp 61 (arm) faced with sponge rubber pad 66 and adapted to grip the exterior of the container when moved toward one another by actuators, each clamp having the shape of the exterior of the container (Abstract, col. 2, lines 49-57, col. 4, line 60 – col. 4, line 24 col. 7, lines 20-61).

It would have been obvious to one of ordinary skill in the art to have modified the method and apparatus of Menayan for disposing tubular (jacket) labels on containers by providing the apparatus with container clamps (holding device) in addition to the finger assembly (separating or spreading jaw unit), as taught by Lindee to insure consistent jacket label application by positively controlling container movement and maintaining predetermined position during labeling. Using the container clamps in combination with the finger assembly in the label applying station for applying the tubular label by clamping the container with the clamps, momentarily releasing their grip as the label is being pulled over the container by the finger assembly and regripping the container and label by the clamps before releasing the finger assembly from the label, as claimed in Claim 1, would have been obvious to one of ordinary skill in the art, as taught or suggested by Lindee, to maintain the position of the container during

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labeling for consistent label application by using clamps to hold the container before and after the jacket label is being applied.

Providing each of the label applying stations with container clamps of oppositely movable arms faced with rubber pad (non-slip surface), of shape of the exterior of the container and mounted on vertical shafts, as claimed, would have been obvious to one ordinary skill in the art, as taught by Lindee. The use of two rotating tables, as claimed in Claim 24, would have been obvious to one of ordinary skill in the art to increase speed of labeling of containers.

***Allowable Subject Matter***

(3)

Claims 3, 6, 7, 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

(4)

Applicant's arguments, see amendment, filed August 12, 2004, with respect to the rejection(s) of claim(s) under Menyan 6,263,940 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made over Menyan '794 in view of Lindee '466.

Lindee clearly suggests the use of container clamps (holding device) in combination with label grippers during jacket label application. Although in the particular method of Lindee, the

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container is moved vertically instead of the label grippers for pull-over application, Lindee is relevant to the method and apparatus of Menayan because the use of clamps to hold the container before and after label pull-over for consistent label application would be pertinent regardless of whether the container or label finger assembly (jaw unit) is moved for pull-over application.

### ***Conclusion***

(5)

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bolen 3,523,052 discloses split block 2 to secure a container during jacket labeling.

(6)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234.

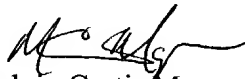
The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melvin Curtis Mayes  
Primary Examiner  
Art Unit 1734

MCM  
November 23, 2004